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EXAMINER

SNAPP, SANDRA S

ART UNIT PAPER NUMBER

3624

DATE MAILED: 04/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/511,650

Applicant(s)

YUAN, FRANK S.

Examiner

Sandra Snapp

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NW

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,8-13,15-17,19-24 and 26-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,8-13,15-17,19-24 and 26-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Response to Amendment

Claims 1-6, 8-13, 15-17, 19-24 and 26-46 are currently pending in the application with claims 1-6, 8-13, 15-17, 19-24 and 26-36 finally rejected in the Office Action dated 11-04-03. Claims 1, 3-5, 19, 21-23, and 32 were amended in the latest amendment filed 3-8-4. Claims 7, 14, 18 and 25 have been canceled in a previous amendment. New claims 40-46 were added in the Amendment of 3-8-4. The Examiner, as discussed in a telephonic interview with the Applicant and his representatives on 2-13-04, agrees to herein withdraw the finality of the rejection of claims 1-6, 8-13, 15-17, 19-24 and 26-39 as rejection in the previous Office Action dated 11-4-3 because the rejection in that Office Action was not previously given in the Office Action of 4-9-3. However, the rejection is herein restated in this Office Action and made final.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 8-13, 15-17, 19-24 and 26-30, 32 and 35-39 remain rejected under 35 U.S.C. 103(a) as being unpatentable over the Wireless Commerce Ltd international application

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(WO 00/22907 – hereinafter “WCL”) in view of the Applicant’s disclosure, and this rejection is herein made final.

The WCL reference discloses a method for an auction providing at least one seller that posts goods or services, providing one or more buyers to bid on the goods, providing an auction manager to conduct the auction, designating a winning buyer, and providing a guarantee via a factoring agreement, wherein the factoring agreement obligates the financial institution to pay at least a portion of the payment due from the winning buyer to the seller, the agreement including a fraud protection to the seller, and the fraud protection avoids nonpayment to the seller (p. 1, lines 20-37 and p. 8, lines 16-26)(claims 1, 3, 4, 5, 12, 19, 21, 22, 23, 32, 35 and 40-44);

the financial institution is a factoring entity, a bank or a credit assurance company (p. 3, lines 1-6)(claims 2 & 20);

the guarantee is a single transaction factoring agreement, a no-loan factoring agreement or a loan factoring agreement (p. 3, lines 1-6, use of a credit (loan) or debit (no loan) account, as for single transaction, it is the Examiner’s position that a single transaction agreement is a well known type of agreement and as such the Examiner takes Official Notice that such are common in the art of agreements, also, in the auction environment, it is common knowledge that often times the transactions are single transactions hence making the agreement a single action transaction agreement merely by the performance of only a single transaction occurring in the auction itself)(claims 36 and 46);

the goods are posted and the auction is conducted online at a web site (p. 3, lines 11-19)(claims 6, 13, 24, 37, 38 & 39);

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the seller applies online for the guarantee prior to posting the goods or services (p. 4, lines 6-14-payment agreement)(claims 8, 15, 26 & 45);

the buyers apply online for a credit check prior to bidding on the goods or services (p. 4, lines 6-14, authentication could include a credit check)(claims 9, 16 & 27);

a portion of the sales price is paid to the auction manager or financial institution (p. 1, lines 33-37)(claims 10, 17 & 28);

the time period is 30 days (the Examiner takes official notice that a specific time period can be set in an auction)(claim 30).

The WCL reference does not specifically disclose an auction wherein the factoring agreement is between the seller and a financial institution (independent claims) and that the financial institution receives commissions (claims 11 & 29), however such is taught by the Applicant as disclosed in the *Background Of The Invention* section of the specification of the present invention and is admitted prior art. The specification states on page 5, lines 4-16,

“Financial institutions have been used in connection with the sale of goods and services for some time. For example, if the seller meets certain qualifications, *the seller may enter into an agreement with a financial institution whereby the financial institution will guarantee the buyer’s credit worthiness or payment to the seller for goods sold.* To this end, the financial institution may advance some or all of the payment to the seller and then go about collecting the account receivable from the buyer. *In return, the financial institution typically receives a commission or some other fee from the seller.*” [emphasis added].

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the WCL reference to include the teaching from the Applicant’s background section so as to ensure payment on the sale and avoid difficulty in collecting payment from the buyer.

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Also, it would have been obvious to one of ordinary skill in the art to modify the WCL reference to include the teachings of the Applicant's background information with regard to financial institutions receiving commissions or fees because it is well known that financial institutions charge fees for the services that they provide, this is their incentive for providing the service, to make money.

Claims 31, 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over WCL as applied to claim 1 above, and further in view of the Aggarwal et al. patent (US 6,151,589).

The WCL reference discloses all the elements of the claimed invention, as stated above, except for having multiple auctions running simultaneously (claims 31, 33 & 34). The Aggarwal et al. patent discloses a method for performing multiple auctions online simultaneously (col. 2, lines 41-53). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the WCL system to include the multiple auctions as taught by the Aggarwal reference so as to maximize the amount of goods and/or services to be auctioned in the least amount of time as well as to provide a forum for selling large scale commodities.

Response to Arguments

The primary argument set forth by the Applicant to distinguish the Wireless Commerce reference from the present invention is that Wireless does not establish *a guarantee via a factoring agreement between the seller and a financial institution, wherein the factoring*

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agreement obligates the financial institution to pay at least a portion of the payment due from the winning buyer to the seller. However, the Applicant admits such agreements are known in the art, as stated above, and therefore does not raise the present application to the level of being patentable. The Applicant argues that there is no motivation to combine such references. The Examiner disagrees. It is the Examiner's position that the rationale behind the buyer-bank relationship in WCL is to ensure payment, hence the rationale is the same for modifying the relationship to one between the seller-financial institution, again to ensure payment. WCL states that "in order to guarantee the buying offers the buyer . . . must have an agreement with a bank." (WCL, page 1, lines 32-33). The Applicant states it is "to provide protection to the seller from fraud – for example, wherein the buyer does not pay for the goods or services delivered" (Amendment, page 21, last paragraph) which is the same as ensuring payment. As such, it would be proper to combine the Applicant's prior art disclosures with the WCL reference hence rendering the present invention obvious in view of the combination.

With regard to new claims 40-46, the Applicant has included that the agreement includes fraud protection which is to avoid nonpayment to the seller. This is presented in the WCL application, the agreement in WCL is provided "for the payment of purchases." (WCL page 1, lines 34-35. Such guaranteeing such payment is a protection against fraud.

Applicant's arguments have been considered but are not persuasive and the application remains finally rejected.

Conclusion

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Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sandra Snapp whose telephone number is 703-305-6940. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on 703-308-1065. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.


SS



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